



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Paper No.

SMITH-HILL AND BEDELL
12670 N W BARNES ROAD
SUITE 104
PORTLAND, OR 97229

COPY MAILED

FEB 09 2005

OFFICE OF PETITIONS

In re Application of	:	
Wayne Devine	:	CORRECTED
Application No. 10/678,550	:	DECISION DISMISSING
Filed: October 2, 2003	:	PETITION
Attorney Docket No. BSW 2460C1	:	

This is in response to the PETITION UNDER 37 CFR 1.53 filed October 12, 2004. Petitioner requests a filing date of October 2, 2003, with figs. 7 and 8 as part of the original application disclosure.

This decision corrects the decision mailed January 18, 2005. Due to an error in printing, the previous decision was mailed with some text missing.

Application papers in the above-identified nonprovisional application were filed on October 2, 2003. However, on September 10, 2004, the Initial Patent Examination Division mailed a "Notice of Omitted Item(s) In A Nonprovisional Application," stating that the application had been accorded a filing date; however, Figures 7 and 8 described in the specification appeared to be omitted from the application. This Notice set a two-month period for reply.

In response, applicant filed the instant petition, disputing omission of the figures on filing. Petitioner contends that FIGS. 7 and 8 were in fact deposited in the Patent and Trademark Office with the nonprovisional application papers as sheet 6 of 8 drawing sheets and that sheet 6 of the drawings has been misplaced in the Patent and Trademark Office. In support thereof, petitioner submitted a declaration of facts of Penelope Stockwell. The petition includes a copy of drawing sheet 6, containing figures 7 and 8, as petitioner maintains the drawing was submitted on original filing.

Petitioner's evidence has been considered, but is not found persuasive that eight (8) sheets of drawings were filed on October 2, 2003. The PTO file is the official record of the papers originally filed in this application. A review of the official file reveals that figures 7 and 8 were not filed on October 2, 2003, since no such drawing figures are present in the file. An applicant alleging that a paper was filed in the PTO and later misplaced has the burden of proving the allegation by a preponderance of the evidence.

Petitioner has not met that burden. The declaration relied on contains the declarant's recall of routine events which occurred 1 year earlier and are not more persuasive than the record of what was filed as shown by the official file.

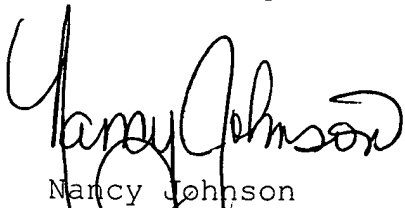
Furthermore, it is acknowledged that an error occurred, in that, two sheets of an IDS from another application were present in this application. However, the showing of one error does not establish another unrelated error, misplacing drawing sheet 6.

The best evidence of what was filed on October 2, 2003, is applicant's postcard. A postcard receipt which itemizes and properly identifies the items which are being filed serves as prima facie evidence of receipt in the Office of all items listed thereon on the date stamped thereon by the Office. See MPEP 503. The declaration of Penelope Stockwell states that their procedure includes submitting a return postcard with the application papers; however, no postcard receipt has been submitted in support of this petition.

In view thereof, the petition is **DISMISSED**.

The application will maintain a filing date of October 2, 2003, using the application papers filed on that date. The records of the Office, as appropriate, will indicate that 7 sheets of drawings were present on filing.

Telephone inquiries specific to this decision may be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson", is written over the typed name.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions